

Senate Bill 109

By: Senator Smith of the 52nd

AS PASSED

AN ACT

To amend Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, so as to change certain duties and obligations from the Department of Administrative Services to the Council of Superior Court Judges of Georgia, the Council of State Court Judges of Georgia, the Prosecuting Attorneys' Council of the State of Georgia, and the Council of Juvenile Court Judges, as appropriate; to provide for certain reporting; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is amended by revising Code Section 47-2-260, relating to continuation of membership, rights, and benefits of judges of superior courts and district attorneys in the Employees' Retirement System of Georgia, notice of election to continue membership, and contributions, as follows:

"47-2-260.

(a) The provisions of this or any other law to the contrary notwithstanding, on and after April 1, 1969, any person appointed or elected as a judge of the superior court or as a district attorney who at the time of such appointment or election is a member of the Employees' Retirement System of Georgia shall be entitled to elect to continue as a member of the retirement system while holding office as a judge of the superior court or district attorney. All rights, credits, and funds in the retirement system which are possessed by any such member at the time of the member's appointment or election shall be continued in force and the member shall be entitled to all rights and benefits under the retirement system to which the member was entitled at the time of the member's appointment or election and to all rights subsequently acquired.

(b) Within 30 days after appointment or election as a judge of the superior court or as a district attorney, any such person who elects to continue as a member of the retirement system shall notify the director of the Employees' Retirement System of Georgia and the

Council of Superior Court Judges of Georgia or the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, of that decision. Upon making such election and giving the required notice, a member who is subject to the provisions of this Code section shall not be required to become a member of or make contributions to the Georgia Judicial Retirement System created by Chapter 23 of this title.

(c) Employee contributions, including contributions for retirement allowances, survivors benefits under Code Section 47-2-128, and social security coverage, of members referred to in this Code section shall be deducted by the Council of Superior Court Judges of Georgia or the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, from the compensation paid by the state to such members and remitted to the retirement system.

(d) The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay from the funds appropriated or otherwise made available for the operation of the judicial branch of government of this state the required employer contributions, including contributions for retirement allowances, survivors benefits under Code Section 47-2-128, and social security coverage, and to remit those contributions to the retirement system."

SECTION 2.

Said title is further amended by revising subsection (b) of Code Section 47-2-262, relating to membership in the Employees' Retirement System of Georgia of assistant district attorneys and employees of the Prosecuting Attorneys' Council, notice of election to become a member, and contributions, as follows:

"(b) Each assistant district attorney and each employee of the Prosecuting Attorneys' Council of the State of Georgia, hereinafter in this Code section collectively referred to as 'employee' or 'employees,' employed on June 30, 1979, may elect to become a member of the Employees' Retirement System of Georgia. Any such employee electing to become a member of the retirement system shall so notify the board of trustees not later than October 1, 1979. Any such employee who failed to notify the board of trustees by that date shall not at any time thereafter be eligible for membership in the retirement system. Any person who becomes an employee on or after July 1, 1979, shall become a member of the Employees' Retirement System of Georgia as a condition of his or her employment, unless he or she is eligible for membership in another publicly supported retirement or pension system or fund which provides retirement benefits based wholly or partially on compensation of such employee paid from state funds. An employee who is eligible for membership in any such other publicly supported retirement or pension system or fund may

elect to become a member of the retirement system in lieu of membership in such other publicly supported retirement or pension system or fund by notifying the board of trustees of such election within 90 days after becoming employed with the Prosecuting Attorneys' Council of the State of Georgia. Any such employee who fails to notify the board of trustees within such time shall not at any time thereafter be eligible for membership in the retirement system. The state salary paid to employees who become members of the retirement system shall be the basis for employee and employer contributions for such employees. All employer contributions required by this chapter for such members shall be paid from funds appropriated or otherwise available. The Prosecuting Attorneys' Council of the State of Georgia shall deduct from the state salaries payable to such members the employee contributions required by this chapter."

SECTION 3.

Said title is further amended by revising subsection (a) of Code Section 47-2-264, relating to membership in the Employees' Retirement System of Georgia of secretaries employed by judges of superior courts and district attorneys, creditable service, and contributions, as follows:

"(a) Each secretary employed by a judge of the superior court or a district attorney under Code Section 15-6-25 or 15-18-17 shall be a member of the Employees' Retirement System of Georgia with a commencement date of July 1, 1975. Any such secretary who is already a member of the retirement system by virtue of service with another employer shall be entitled to credit for all service rendered while an employee under the retirement system. All contributions required under this chapter made on behalf of such judicial secretaries shall be paid from funds appropriated or otherwise available for the operation of the superior courts, and all contributions required under this chapter made on behalf of such secretaries of district attorneys shall be paid from funds appropriated or otherwise available. All such payments shall be in addition to the regular compensation provided by law for such secretaries."

SECTION 4.

Said title is further amended by revising subsection (d) of Code Section 47-2-265, relating to membership in the Employees' Retirement System of Georgia of district attorney investigators, as follows:

"(d) The state salaries paid to district attorney investigators who become members of the retirement system pursuant to this Code section shall be the basis for employee and

employer contributions to the retirement system for such members. All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter for such members shall be paid from funds appropriated or otherwise available. The Prosecuting Attorneys' Council of the State of Georgia shall deduct from the state salaries payable to such members the additional employee contributions required by this chapter."

SECTION 5.

Said title is further amended by revising subparagraph (f)(1)(B) of Code Section 47-2-266, relating to membership in the Employees' Retirement System of Georgia of judicial employees and contributions, as follows:

"(B) The Council of Superior Court Judges of Georgia, the president of The Council of Superior Court Judges of Georgia, or the district administrative judge employing the person claiming the creditable service shall pay the employer contributions that would have been paid to the retirement system if the person claiming the creditable service had been a member during the period of time for which creditable service is claimed plus regular interest on such employer contributions compounded annually from the time the prior service was rendered to the date of payment. For prior service as a judicial employee specified in subparagraph (a)(1)(D) of this Code section, the employer contributions plus interest required by this subparagraph shall be paid by the Council of Superior Court Judges of Georgia from funds appropriated or available for the operation of the superior courts."

SECTION 6.

Said title is further amended by revising Code Section 47-2-267, relating to membership of employees of district attorneys in the Employees' Retirement System of Georgia and contributions, as follows:

"47-2-267.

Except as provided in Code Section 47-2-265, each full-time employee of a district attorney, which employee is compensated through funds appropriated by the General Assembly, shall be a member of this retirement system as a condition of employment. Any such employee who is already a member of this retirement system by virtue of service with another employer shall be entitled to credit for all service rendered while an employee under the retirement system. All contributions required under this chapter shall be paid from funds appropriated or otherwise available. The Prosecuting Attorneys' Council of the

State of Georgia shall deduct from the state salaries paid to such members the employee contributions required by this chapter."

SECTION 7.

Said title is further amended by revising subsection (a) of Code Section 47-2-290, relating to judges, solicitors, and other employees of state courts subject to a merit system, membership in the Employees' Retirement System of Georgia, contributions, and exemptions, as follows:

"(a) The state courts of this state are declared to be adjuncts of the superior courts, the state courts having concurrent jurisdiction in all civil and criminal matters except those exclusively vested in the superior courts. All judges, solicitors, and other employees of any state court in this state shall be subject to a merit system of personnel administration as promulgated by each state court under which all such officers and employees shall perform services on the basis of merit, fitness, and efficiency. All such officers and employees are authorized to become members of the Employees' Retirement System of Georgia in accordance with this chapter. The governing authority of each county of this state shall deduct or collect from each member the employee contributions required by this chapter and shall remit those contributions to the retirement system on a monthly basis. The Council of State Court Judges of Georgia is authorized and directed to pay from the funds appropriated or otherwise available the employer contribution required by this chapter for judges and employees of the state courts, which contribution shall be paid by the Council of State Court Judges of Georgia, upon receipt of an invoice from the retirement system. The Prosecuting Attorneys' Council of the State of Georgia is authorized and directed to pay from the funds appropriated or otherwise available the employer contribution required by this chapter for solicitors-general of the state courts, which contribution shall be paid by the Prosecuting Attorneys' Council of the State of Georgia, upon receipt of an invoice from the retirement system."

SECTION 8.

Said title is further amended by revising paragraph (1) of subsection (a) of Code Section 47-8-67, relating to election of survivors benefits coverage, contributions required for such coverage, effect of such coverage on appointment to the office of senior judge, and amount of survivors benefits, as follows:

"(1) Any judge so electing shall pay an amount equal to 2 percent of his or her state salary for each year of prior service as a judge of superior court up to the time of such

election and shall thereafter contribute, in addition to the 5 percent contribution required by this chapter, 2 percent of the salary paid to him or her by the state. Such amount shall be deducted from such salary by the Council of Superior Court Judges of Georgia and deposited into the retirement fund; and"

SECTION 9.

Said title is further amended by revising subsection (b) of Code Section 47-12-41, relating to payments by district attorneys into the District Attorneys Retirement Fund of Georgia, as follows:

"(b) Each district attorney who is now in office and who is otherwise eligible to participate in the benefits provided by this chapter shall make his or her payments to the fund until his or her retirement. Any such district attorney who is eligible to participate in the fund but who has not made the payments set forth in this Code section may pay such amounts into the fund not later than July 1, 1961, with interest at the rate of 5 percent per annum on all amounts due since February 17, 1949, to the date of payment to the Prosecuting Attorneys' Council of the State of Georgia."

SECTION 10.

Said title is further amended by revising subsection (a) of Code Section 47-12-43, relating to manner of deduction of payments to the fund, penalty for late payments, and payments made on behalf of the district attorney, as follows:

"(a) The payment into the fund either of 5 percent or 7 1/2 percent, as applicable, of the state salary shall be deducted monthly by the Prosecuting Attorneys' Council of the State of Georgia from the salary of each district attorney who is a member of the fund. If any such payments have not been made by February 15 of the succeeding year, the sum due shall incur a penalty of 6 percent interest per annum computed on the principal amount from February 15 until actually paid. Beginning with the payments to be made covering the calendar year 1964, and for each calendar year thereafter, if the sum due is not paid by February 15 of the succeeding year, such sum due shall be increased by 10 percent plus 6 percent interest per annum, computed on the sum due plus the additional 10 percent, from February 15 until the date of actual payment of the entire amount."

SECTION 11.

Said title is further amended by revising Code Section 47-12-44, relating to transfer of membership and contributions to the Employees' Retirement System of Georgia and payment of additional state contribution upon transfer, as follows:

"47-12-44.

The board of trustees shall transfer to the Employees' Retirement System of Georgia all contributions made to the fund by a member who transfers to the Employees' Retirement System of Georgia; and the Prosecuting Attorneys' Council of the State of Georgia is authorized and directed to pay from the funds appropriated or otherwise available an additional amount equal to the 5 percent contribution of such member plus an additional 20 percent of the contribution, so that the state contribution shall be in accordance with the Employees' Retirement System of Georgia."

SECTION 12.

Said title is further amended by revising subsection (e) of Code Section 47-18-40, relating to agreement between state and federal government for state employees, like agreements between federal government and interstate instrumentalities, and division of retirement system, as follows:

"(e) The position of any member of the division or part of the Superior Court Judges Retirement Fund of Georgia who does not desire coverage may be transferred to the separate retirement fund composed of positions of members who do desire coverage upon such terms and conditions and at such time as permitted by federal law. In the event of such transfer, the employee contributions of such member required for social security coverage shall be deducted by the Council of Superior Court Judges of Georgia and remitted to the state agency, together with the required employer contributions. The Council of Superior Court Judges of Georgia is authorized and directed to pay, from funds appropriated or otherwise available for the operation of the superior courts, the required employer contributions on any such transferred member."

SECTION 13.

Said title is further amended by revising Code Section 47-18-43, relating to referendum on the question of coverage of positions covered by Chapter 12 of such title, as follows:

"47-18-43.

Anything in this chapter to the contrary notwithstanding, the Governor is empowered to authorize a referendum in accordance with the requirements of Section 218(d)(3) of the

Social Security Act on the question of whether services in positions covered by the District Attorneys Retirement Fund of Georgia, Chapter 12 of this title, shall be excluded from or included under an agreement under this chapter with an effective date of July 1, 1956. If the referendum results in an affirmative vote, employee contributions required for social security coverage shall be deducted by the Prosecuting Attorneys' Council of the State of Georgia from the compensation or other funds due the employee and shall be remitted to the state agency, together with the required employer contributions. Such employee deductions shall be based on an affidavit from each individual as to the total wages received by him or her each calendar quarter as district attorney. Such affidavit shall be forwarded to the Prosecuting Attorneys' Council of the State of Georgia before the fifth day of the month following the end of each calendar quarter. If any district attorney fails to submit the required affidavit to the Prosecuting Attorneys' Council of the State of Georgia within the required time, any and all funds due such individual shall be withheld by the Prosecuting Attorneys' Council of the State of Georgia until an appropriate affidavit has been received. The Prosecuting Attorneys' Council of the State of Georgia is authorized and directed to pay the required employer contribution from the funds appropriated or otherwise available."

SECTION 14.

Said title is further amended by revising Code Section 47-18-44, relating to referendum on the question of coverage of positions covered by Chapter 8 of such title, as follows:

"47-18-44.

The Governor is empowered to authorize a referendum in accordance with the requirements of Section 218(d)(3) of the Social Security Act on the question of whether services in positions covered by the Superior Court Judges Retirement Fund of Georgia, Chapter 8 of this title, shall be excluded from or included under an agreement under this chapter with an effective date of July 1, 1956. If the referendum results in an affirmative vote, employee contributions required for social security coverage shall be deducted by the Council of Superior Court Judges of Georgia and remitted to the state agency, together with the required employer contributions. The Council of Superior Court Judges of Georgia is authorized and directed to pay the required employer contribution from the funds appropriated for the operation of the superior courts of the state."

SECTION 15.

Said title is further amended by revising Code Section 47-23-25, relating to payment of administrative expenses, as follows:

"47-23-25.

In order to pay the administrative expenses of the fund and upon the receipt of a request from the board on or after July 1, 1998, and each year thereafter, the Council of Superior Court Judges of Georgia, the Council of State Court Judges of Georgia, the Council of Juvenile Court Judges, and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay into the fund, from funds appropriated or otherwise available, an amount sufficient to pay the administrative expenses of the fund as certified by the board to the Council of Superior Court Judges of Georgia, the Council of State Court Judges of Georgia, the Council of Juvenile Court Judges, and the Prosecuting Attorneys' Council of the State of Georgia."

SECTION 16.

Said title is further amended by revising Code Section 47-23-47, relating to transfer of members' contributions, as follows:

"47-23-47.

The board of trustees shall transfer to the Employees' Retirement System of Georgia all contributions made to the fund by a member who transfers to the Employees' Retirement System of Georgia; and the Council of Superior Court Judges of Georgia, the Council of State Court Judges of Georgia, the Council of Juvenile Court Judges, and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized and directed to pay from the funds appropriated or otherwise available an additional amount equal to the 5 percent contribution of such member plus an additional 20 percent of the contribution, so that the state contribution shall be in accordance with the Employees' Retirement System of Georgia."

SECTION 17.

Said title is further amended by revising subsection (a) of Code Section 47-23-80, relating to contributions by superior court judges and district attorneys and employer contributions, as follows:

"(a) The provisions of this Code section shall be applicable to judges of the superior courts and district attorneys. The amount of employee contributions to the fund by superior court judges shall be 7 1/2 percent of the earnable monthly compensation from state funds

provided by law for judges of the superior courts. The amount of employee contributions to the fund by district attorneys shall be 7 1/2 percent of the earnable monthly compensation from state funds provided by law for district attorneys. The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized to deduct 7 1/2 percent monthly from the earnable monthly compensation of each judge of the superior courts and each district attorney who is a member of the retirement system to cover the employee contributions to the fund. The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are also authorized to make an additional deduction from such earnable monthly compensation to cover any required employee tax for social security coverage. The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized and directed to pay, from the funds appropriated or otherwise available, any required employer contribution for social security coverage on such judges and district attorneys. From funds appropriated or otherwise available, the Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized and directed to pay into the fund the employer contributions, including contributions to fund any creditable service authorized by this chapter, which, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits and the spouses' benefits under this chapter."

SECTION 18.

Said title is further amended by revising paragraph (2) of subsection (b) of Code Section 47-23-81, relating to contributions by judges and solicitors-general of state courts, employer contributions, and reports required, as follows:

"(2) The Council of State Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay into the fund provided for by this chapter monthly employer contributions, including contributions to fund any creditable service authorized by this chapter. Such amounts are to be determined by the board and, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits under this chapter. The Council of State Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay from the funds appropriated or otherwise available any required employer contribution for social security coverage on such members."

SECTION 19.

Said title is further amended by revising subsection (c) of Code Section 47-23-81, relating to contributions by state court judges and solicitors-general of state courts, employer contributions, and reports required, as follows:

"(c)(1) It shall be the duty of each employing unit affected by this chapter to designate a responsible person to submit the reports and forward the employee contributions set forth in this Code section. It shall be the duty of the person so designated to comply with this Code section. If the required reports and employee contributions are not forwarded to the board or if duplicate copies of the reports are not directed to the Office of Treasury and Fiscal Services, in accordance with this Code section, as appropriate, the Office of Treasury and Fiscal Services is authorized to withhold any state payments payable to the governmental unit failing to forward such reports and employee contributions until such time as such reports and contributions have been received.

(2) It shall be the duty of the clerk of each state court to notify the Council of State Court Judges of Georgia, the Prosecuting Attorneys' Council of the State of Georgia, and the board of directors of this retirement system of the election or appointment of a new state court judge or solicitor-general or the vacating of any such office. Such notification shall be made within two weeks of such election, appointment, or vacancy.

(3) Each employing unit affected by this chapter shall provide the Council of State Court Judges of Georgia, the Prosecuting Attorneys' Council of the State of Georgia, and the board of directors of this retirement system with a list of all employees of the employing unit who are current members of this retirement system. Such report shall be made each calendar month."

SECTION 20.

Said title is further amended by revising paragraph (2) of subsection (b) of Code Section 47-23-82, relating to contributions by juvenile court judges, employer contributions, and reports required, as follows:

"(2) The Council of Juvenile Court Judges is authorized and directed to pay into the fund provided for by this chapter monthly employer contributions, including contributions to fund any creditable service authorized by this chapter. Such amounts are to be determined by the board and, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits under this chapter."

SECTION 21.

This Act shall become effective on July 1, 2010.

SECTION 22.

All laws and parts of laws in conflict with this Act are repealed.